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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/021,466      | 02/10/1998  | TERRY LEE OEHRKE     | 1177                | 4500             |

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EXAMINER

DINH, DUNG C

ART UNIT PAPER NUMBER

2153

DATE MAILED: 08/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/021,466

Applicant(s)

OEHRKE ET AL.

Examiner

Dung Dinh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 79-115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

Applicant's argument in the Appeal Brief filed 2/24/03 is persuasive and, therefore, finality is withdrawn. Below is a new ground of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless --*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 79- are rejected under 35 U.S.C. 102(e) as being anticipated by Tanaka et al. US patent 5,610,841.**

As per claim 79, Tanaka teaches a scalable system for providing network processing and stored data access, comprising:

a server [fig.2 - SCB's 3000, ...];  
a switch [fig.2 - ATM SW 4000] connected to the server;  
a data storage device [fig.2 MSFS 1000, ...] connected to the switch; and

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wherein the server operates independently of the storage device and the system permits independent inclusion or removal of server and storage device [apparent from col.4 lines 22-30, col.7 line 1-7].

As per claims 80, independent removal/addition of servers [SCB] and storage devices [MSFS] is an inherent features of Tanaka system as explained above.

As per claim 82-88, 91-95, 98-99, 102-103, they are rejected under similar rationales as for claims 79-80 above.

As per claims 104, 106, 108-113, 114, they are rejected under similar rationales as for claims 79-80 above. Tanaka teaches receiving user requests and independently routing data from the storage to the server in response to the query [col.4 lines 22-26].

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*

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**Claims 81, 89, 96, 100, 105, 107, 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al US patent 5,610,841.**

As per claim 81, 89, 96, 100, 105, 107, 115, Tanaka does not specifically disclose the system being use for mail application, news application, directory application, groupware, etc. The specific application provided would have clearly been a matter of design choice. Although Tanaka specifically disclose the system for providing video on demand application, it would have been obvious for one of ordinary skill in the art to apply the teaching of Tanaka to other applications because it would have enable a scalable system for handling large number of subscribers [col. 7 lines 4-7, col.4 lines 22-30].

**Claims 90, 97, and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al US patent 5,610,841 and further in view of Peacock US patent 4,914,570.**

As per claim 90, 97 and 101, Tanaka does not specifically disclose a load balancer to route requests to the servers with the least load. The usage of a load balancer to route request to server with the least load is notoriously well known in the art. Peacock teaches load balancer to distribute work among processors [col.12 lines 50-58]. It would have been obvious for one of ordinary skill in the art to provide a load balancer

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because it would have provided efficient distribution of request among servers and prevented overloading of one particular server.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 2100 Customer Service whose telephone number is (703) 306-5631.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**or faxed to:**

(703) 746-7239, (for formal communications intended for entry)  
(703) 746-7240 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).



Dung Dinh  
Primary Examiner  
August 22, 2003